

## Application for Zoning Board of Adjustment

**\* This application must be filled out completely and signed before submittals are placed on the ZBA agenda.**

### PETITIONER INFORMATION

Name of Petitioner: The Rev. Susan Andrews (Interim Pastor)  
Address of Petitioner: 9450 Clayton Road Phone #: 914-815-6507  
Email address of petitioner: sandrews@laduechapel.org

### PROPERTY INFORMATION

Address: Ladue Chapel Presbyterian Church 9450 Clayton Rd.  
Zoning District: B-Residential  
Parcel Identification Number: 19L140091  
Variance being requested: Permission to hang temporary banners  
(Violation of 130-5(a)(4) Institutional signs for  
institutional uses

By signing this application, you acknowledge that by submitting an incomplete petition, your item may not be added to the meeting agenda. A representative for the proposal must be in attendance to present the project to the Board.

X Susan Andrews Date: July 30, 2020

**\* This application and review for City of Ladue building permitted purposes only. Please be aware of any additional covenants and indentures which may be recorded with your subdivision.**

**CITY OF  
LADUE**

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**Building Department**

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May 29, 2020

Mr. Tom Sargent  
Ladue Chapel Presbyterian Church  
9450 Clayton Road  
Ladue, MO 63124

Dear Mr. Sargent:

We have received your application to hang banners between the columns at Ladue Chapel. Unfortunately, these signs are not in compliance with our zoning ordinance. The Ladue sign code allows one temporary banner to be displayed for a period of two weeks, but such temporary banner should be a maximum of eight (8) square feet. The proposed banners exceed this maximum and the requested signage is denied.

Please contact me at 314-997-6308 or [asukanek@cityofladue-mo.gov](mailto:asukanek@cityofladue-mo.gov) if you have any questions.

Sincerely,



Andrea Sukanek  
Planner, City of Ladue



# Ladue Chapel Presbyterian Church (USA)

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*Making A Difference*

July 30, 2020

**TO:** Zoning Board of Adjustment Chairman  
Building Department, Ladue City Hall, St. Louis MO 63124

**FROM:** Ladue Chapel Presbyterian Church  
9450 Clayton Road, St. Louis, MO 63124

**RE:** Variance Application/Ordinance Violation

Dear Members of the Zoning Board of Adjustment:

The Session (Governing Board) of the Ladue Chapel Presbyterian Church, in response to the Ordinance Violation Notification dated March 26, 2020, respectfully requests a Variance or other determination that the banners hung from the church building portico are not in violation of the City of Ladue zoning ordinances. Further, Ladue Chapel requests a review by the City of Ladue of the application of its zoning ordinances to Ladue Chapel.

Ladue Chapel has been a visible and significant presence in the City of Ladue for 76 years. Our membership consists of 1550 adult members and over one hundred and fifty children and youth, (43 % of whom live in the City of Ladue). Our building is generously used by many community groups – AA and Al Anon, the St. Louis Symphony Lecture series, concerts, the Interfaith Partnership of St. Louis, and many others. Our mission outreach includes meals to The St. Patrick's Women's Center, Isaiah 58 Food Bank, Bridge Bread, Habitat for Humanity, and more. The Ladue Chapel Nursery School (founded in 1957) is the second oldest nursery school in the City of Ladue, and continues to nurture and educate 60 City of Ladue children each year.

Members of our congregation serve as teachers, lawyers, health professionals, business owners, financial managers, political leaders, and active and retired citizen tax payers of the City of Ladue. Our community of faith engages in the life of the City of Ladue as consumers, public servants, supporters of the public and private schools, and thoughtful city neighbors.

We request a review of the finding of a violation of the ordinance, and a variance or other determination, for the following reasons:

SUSAN R. ANDREWS, INTERIM PASTOR & HEAD OF STAFF  
DIETER U. HEINZL, ASSOCIATE PASTOR, FAITH FORMATION  
MELANIE A. SMITH, ASSOCIATE PASTOR, YOUTH & YOUNG ADULTS  
COURTNEY M. CHANDLER, DIRECTOR OF FAITH FORMATION & FAMILY MINISTRY

DAVID J. ERWIN, DIRECTOR OF MUSIC MINISTRY  
ANNE B. PEACOCK, MINISTRY ASSISTANT  
THOMAS M. SARGENT, BUSINESS ADMINISTRATOR  
JULIE WALTHER-SCHEIBEL, NEW MEMBER COORDINATOR

- 1) **The banners displayed on the portico of our building are “symbols”, not “signs.”**  
Just as citizens are free to attach American flags to their private homes as a symbol of their patriotism, we have attached banners to our portico as symbols of our faith - values and words that express our spiritual commitments.
- 2) **The banners attached to our portico are temporary – not permanent.**  
Ladue Chapel has two sets of banners, and is in the process of purchasing a third set. Each set of banners will be hung for 6 to 8 weeks – with no banners being displayed for half of the year.

**Blue Banners** with the words Peace and Joy during the Season of Advent (December-mid-January).

**Purple Banners** with the words Worship and Wonder during the Season of Lent/Easter (mid - March to mid- May)

**Green Banners** with words yet to be determined during Ordinary Time (August-September)

- 3) **The banners are part of our building.**

Ladue Chapel Presbyterian Church owns our property, but it is held in trust for the Presbyterian Church, USA, and our congregation is entrusted to care for it and use it for the furtherance of our faith, on behalf of the denomination. As Presbyterians, we are welcoming to all – and are called to offer visible physical symbols of hospitality and openness on our building. The banners add warmth and color and welcome, inviting those who drive by our building to consider the values and promises of our faith. Since the building is set far from the road, and our street sign is small (in accordance with City of Ladue Zoning Ordinances) the banners are a visual symbol expressing our identity. Without such banners, it is a hardship for us to proclaim who we are.

The banners are made of strong vinyl – and are attached to the edge of our front portico with secure brackets and wire braces to withstand weather and wind. An outside contractor uses a lift to attach and secure the banners every time the banners are raised or lowered. The design and installation of these banners represents a significant investment by our members – one strongly supported by our many donors.

- 4) **Our use of these banners is exempt from City zoning regulations under both federal and Missouri law.**

The principles and dictates of the First Amendment to the United States Constitution and the federal Religious Freedom Act of 1993, as well as Article I, Sections 5, 6 and 7 of the Missouri Constitution of 1945, and the Religious Freedom Restoration Act, MO Rev. Stat. 1.302, (2016), limit the rights of municipalities to regulate churches. More specifically, the Missouri Supreme Court stated clearly in *Congregation Temple Israel v.*

*City of Creve Coeur*, 320 S.W.2d 451 (Mo.1959), that while Section 89.020 RSMo 1994 gives power to municipal legislative bodies to enact regulatory zoning ordinances in their municipalities, and that municipalities have regulatory power over churches under their police power, that power over churches is purely limited to safety regulation. More recently, the Eastern District Court of Appeals reiterated that position in *Village Lutheran Church v. City of Ladue*, 935 S.W.2d 720, 722 (Mo.App. E.D.1996). The Ladue Chapel banners in question do not raise questions of safety that are within the power of the City of Ladue to regulate.

For all of the above reasons, we respectfully request the City of Ladue to determine that Ladue Chapel Presbyterian Church is not in violation of the zoning ordinances of the City of Ladue.

Ladue Chapel acknowledges that we are responsible for paying the cost for any transcripts ordered from the reporting service.

Representatives of Ladue Chapel look forward to discussing these matters at the September meeting of the Zoning Board of Adjustment.

Thank you for your consideration of these issues.

Ladue Chapel Presbyterian Church

A handwritten signature in cursive script, reading "Susan R. Andrews". The signature is written in dark ink and is positioned above the typed name of the signatory.

The Rev. Dr. Susan R. Andrews  
Interim Pastor  
Ladue Chapel Presbyterian Church

South  
county  
GIS Services Center

# Property Lookup

St. Louis County Open Records

9450 Clayton Road

X

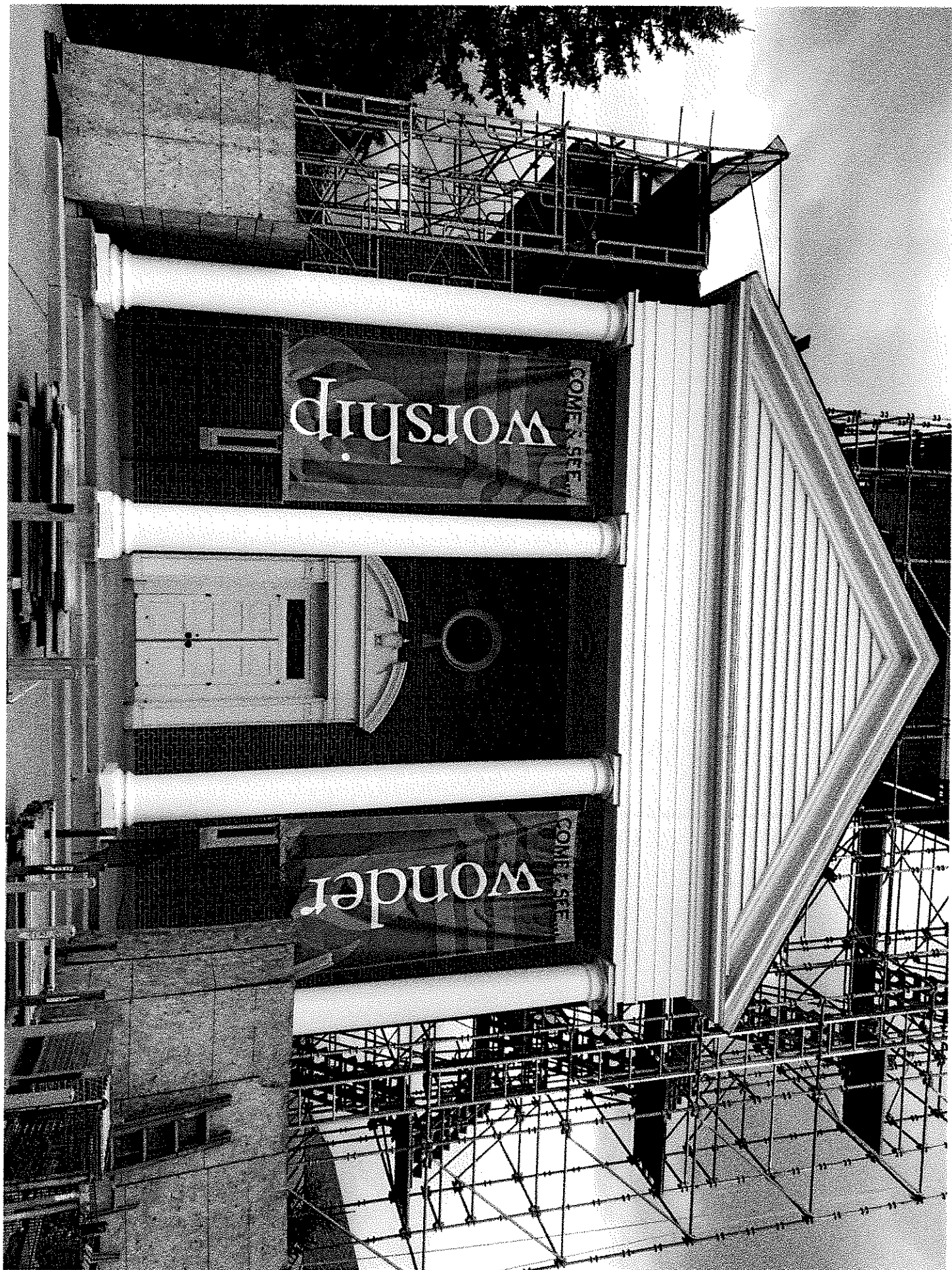
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**935 S.W.2d 720**  
**VILLAGE LUTHERAN CHURCH,**  
**Plaintiff-Respondent,**

**v.**

**CITY OF LADUE, a municipal**  
**corporation, et al., Defendants-**  
**Appellants.**

**No. 70072.**

**Missouri Court of Appeals,**  
**Eastern District,**  
**Division Three.**

**Oct. 29, 1996.**

**Motion for Rehearing and/or Transfer**  
**to**

**Supreme Court Denied Dec. 17, 1996.**

**Application to Transfer Denied**

**Jan. 21, 1997.**

Moser and Marsalek, P.C., F. Douglas  
O'Leary, St. Louis, for Defendants-Appellant.

Rosenblum, Goldenhersh, Silverstein &  
Zafft, P.C., Shulamith Simon, St. Louis, for  
Plaintiff-Respondent.

HOFF, Judge.

City of Ladue appeals from a judgment of the circuit court which reversed the Ladue City Council's denial of Village Lutheran Church's application for special use permit. We affirm the judgment of the circuit court with modification.

Village Lutheran Church ("the Church") has been located on 4.2 acres of land in the City of Ladue ("the City") since 1949. The present church structure was built in 1968 and an attached education building was constructed in 1973. Because of the growth in the number of young church members that occurred in the past twenty years and the growing interest in youth activities, the Church desires to construct an addition to the existing structure.

The Church's property is zoned as part of a "B" zoning district under the Ladue Zoning

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Code. Under § VII paragraph D of the Ladue Zoning Code, any alteration or extension of a church requires a special use permit. Although the Church never applied for a special use permit when it constructed the original church facility or first educational addition, the Church filed its application for special use permit with the City to expand its church facilities on March 25, 1993.

The Church proposed an addition of a multi-purpose building to be attached to the existing church structure. This multi-purpose building would include a junior high size basketball court and classrooms. Additionally, the Church proposed two adult Bible classrooms, one of which "fills in" a gap in the existing church structure and one that is to be added on to the back of the existing church structure. The Church's goal in building the proposed additions is to accommodate the growth in the Sunday school, pre-school summer Bible program, and various youth group activities. Additionally, the Church desires to maintain a unified structure so that church members would not have to exit the existing church structure and reenter a new structure.

Architectural and engineering firms were retained to develop and draft appropriate plans. As designed, the buildings on the Church property, both existing and proposed, would occupy 12% of the Church's property. The parking areas, existing and proposed, would cover 28% of the property and the sidewalks would cover 2% of the property. Grass and landscaping would remain on 58% of the property.

The Ladue Zoning and Planning Commission ("the Commission") considered the Church's application at four meetings on June 30, 1993, September 22, 1993,

November 18, 1993, and April 5, 1994. On April 13, 1994, the Commission issued a report to the Ladue City Council finding the Church's proposed additions satisfied the criteria listed in § VII paragraph C of the Ladue Zoning Ordinance for granting a special use permit. Specifically, the Commission found the Church's proposed addition is an appropriate use of the site and it does not appear that the project will have a material adverse affect upon the residents of the area in the vicinity of the site or the residents of the City in general.

Additionally, under the specific factors under § VII paragraph C, the Commission found there would be: (1) no significant increase in street traffic; (2) no fire hazards; (3) no undue concentration of people on the site; (4) & (5) no increase in required municipal services and expenditures; and (6) no likelihood of actual injury to the character of the district or of damage to property values in the area resulting from the proposed use.

The Commission did, however, find a zoning violation of the construction as proposed. The portion of the site plan showing a side yard of 25 feet was in violation of the Ladue Zoning Ordinance because the Church's property was in a "B" zoned residential area, and under § V paragraph B(1), the width of a required side yard must be at least fifty feet. The Commission recommended approval of the special use permit if the Church provided for a 50 foot side yard. If not provided for, the Commission's recommendation was for denial of the Church's application.

Since the Commission's report was filed, the Church modified its plan with respect to the side yard. The proposed side yard now measures 155 feet.

A Ladue City Council meeting was held on August 29, 1994 where the Council heard evidence from the Church in favor of the application and evidence from residents who

lived in proximity of the Church in opposition to the application. On November 21, 1994, the Ladue City Council issued its Findings of Fact, Conclusions of Law and Decision which denied the Church's application for special use permit.

On December 20, 1994, the Church filed a petition for judicial review, writ of certiorari, declaratory judgment and damages. The counts requesting declaratory judgment and damages were later deferred. On February 21, 1995, the circuit court entered its amended judgment finding that "the decision of the Ladue City Council is not authorized by law in that the Ladue zoning regulations cannot be enforced against Village Lutheran Church and further finds that there was not competent

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and substantial evidence on the record to support the denial of the application for special permit." The circuit court reversed the decision of the Ladue City Council and ordered the City to grant the Church's application for special use permit. This appeal followed.

In its first point on appeal, the City contends the trial court erred in ruling that Ladue's zoning ordinance could not be applied to the Church. The City asserts that regulation of a religious institution and its activities in a residential district under a zoning ordinance is a proper exercise of its police power. Under this police power, the City insists it has the right to attempt to provide a balance between the Church's needs and the impact on neighboring homes. We find this issue dispositive of the case.

We review the findings and decision of the city council to deny the application for special use permit and not the judgment of the circuit court. *City of Cabool v. Mo. State Bd. of Mediation*, 689 S.W.2d 51, 53 (Mo. banc 1985). We review the evidence in the

light most favorable to the council's decision. State ex rel. Presbyterian Church v. City of Washington, 911 S.W.2d 697, 701 (Mo.App.1995). We may not substitute our judgment of the evidence for that of the council's. Id. Under § 89.010 RSMo 1994, we review the whole record to determine if the council's decision is supported by competent and substantial evidence. Id.

Section 89.020 RSMo 1994 gives power to municipal legislative bodies to enact regulatory zoning ordinances in their municipalities. Section 89.020.1 RSMo 1994 states:

For the purposes of promoting health, safety, morals or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes.

In 1959, the Missouri Supreme Court specifically addressed the scope of § 89.020 in Congregation Temple Israel v. City of Creve Coeur, 320 S.W.2d 451 (Mo.1959). The Supreme Court held that the phrase "the location and use of buildings, structures and land for trade, industry, residence or other purposes", as used in § 89.020, does not give municipalities power over the use of property used for religious purposes by religious organizations whose rights to free exercise of religion are protected by constitutional guaranties. Id. at 454.

The Supreme Court stated that municipalities have regulatory power over churches under their police power, but that power is purely limited to safety regulation. Id. at 456. Proper safety regulations over a

church were held to include: safety of boilers, smokestacks and similar facilities, sanitation, manner and type of construction for fire protection, off-street parking facilities, sewage disposal and other matters related to the public health, safety, and welfare of the municipal residents. Id.

Section 89.020 does not give municipalities zoning power over churches. Any regulatory power a municipality has over churches is purely for safety regulation. The decision of the Council was based on its zoning ordinances and not under enumerated safety regulations allowed under a municipality's police power as enunciated in Congregation Temple Israel. Therefore, we find the circuit court was correct in its assessment that the Council's decision "is not authorized by law in that the Ladue zoning regulations cannot be enforced against Village Lutheran Church." Accordingly, we affirm the judgment of the circuit court reversing the decision of the Council, but modify the judgment to reflect that the City need not issue a special permit because the Church need not apply nor receive

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a special use permit before proceeding with any new construction.

Affirmed with modification.

CRAHAN, P.J., and GRIMM, J., concur.

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1 Congregation Temple Israel analyzed § 89.020 RSMo 1949. However, the language of that section has not changed and remains the same as the language at issue here in § 89.020.1 RSMo 1994.

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**997 S.W.2d 506**  
**VILLAGE LUTHERAN CHURCH,**  
**Plaintiff/Appellant,**  
**v.**  
**CITY OF LADUE,**  
**Defendant/Respondent.**  
**No. ED 75080.**  
**Missouri Court of Appeals,**  
**Eastern District,**  
**Division One.**  
**June 1, 1999.**  
**Motion for Rehearing and/or Transfer**  
**to**  
**Supreme Court Denied July 6, 1999.**  
**Application for Transfer Denied**  
**Aug. 24, 1999.**

Simon Shulamith, Clayton, MO, for appellant.

F. Douglas O'Leary, St. Louis, MO, for respondent.

CRANDALL, J.

Plaintiff, Village Lutheran Church, appeals from the trial court's grant of summary judgment in favor of defendant, City of Ladue (hereinafter City), in its action

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for damages against City for violating its rights to the free exercise of religion in requiring it to apply for a special use permit and in denying that application. We affirm.

The record reveals that Village Lutheran Church (hereinafter Church) filed an application with City for a special use permit to expand the Church's facilities. The Church proposed an addition of a multi-purpose building to be attached to the existing Church structures. The expansion would serve the needs of a congregation which, during recent years, had experienced a growth in the number of young members as well as a

corresponding increased interest in youth activities. The expansion would include a basketball court and classrooms. The Church's goal was to accommodate the growth in Sunday school, preschool summer Bible program, adult bible study, and various youth group activities, as well as to maintain a unified structure so Church members would not have to exit one building to enter another. City's Zoning and Planning Commission (hereinafter Commission) considered the application and recommended approval of the special use permit if the Church moved the construction to provide for a 50-foot side yard setback instead of the proposed 25-foot side yard setback. If the Church refused to comply with this request, however, the Commission recommended the denial of the application. At a hearing before the City Council, neighbors adjacent to the Church property voiced their objections to the proposed expansion, particularly the location of the gymnasium. They argued that the gymnasium should be closer to Clayton Road, because, among other things, such a large building would have a negative impact on the view from their houses. City denied the Church's application for a special use permit.

The Church brought an action against City for judicial review (Count I), writ of certiorari (Count II), declaratory judgment (Count III), and damages (Count IV). The trial court deferred the last two counts and considered the first two. The trial court reversed City's decision and ordered City to grant the Church's application for a special use permit. On appeal, this court found that section 89.020, RSMo (1994) did not give municipalities zoning power over churches, except for purely safety regulations. Village Lutheran Church v. City of Ladue, 935 S.W.2d 720, 722 (Mo.App. E.D.1996) (hereinafter Village Lutheran I ). This court therefore affirmed the judgment of the trial court reversing City's denial of the Church's application, but modified the judgment to reflect that City need not issue a special use permit because the Church had to neither

apply nor receive a special use permit before proceeding with any new construction. *Id.* at 722-723.

The Church then proceeded in the trial court with Count IV ' of its petition, which sought damages for City's violation of the Church's free exercise of religion in violation of the Religious Freedom Restoration Act, 42 U.S.C. Sections 2000bb, et seq. and the First and Fourteenth Amendments to the Constitution of the United States. City filed a general denial and raised the affirmative defense of immunity.

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City moved for summary judgment, submitting affidavits and exhibits, including the transcript of the proceeding before the City Council. The trial court granted summary judgment in favor of City. The Church now appeals from that judgment.

In its first point, the Church contends the trial court erred as a matter of law in granting summary judgment in favor of City because City's requirement that the Church apply for a special use permit and its subsequent denial of the application violated the Church's constitutional right to the free exercise of religion. The Church relies on the decision in *Congregation Temple Israel v. City of Creve Coeur*, 320 S.W.2d 451 (Mo.1959) to support its position. In that case, the Supreme Court of Missouri held the state statute enabling municipalities to enact regulatory zoning ordinances did not grant to municipalities the authority to restrict the location of churches or the "use of property for religious purposes by religious organizations whose rights to free exercise of religion are protected by ... constitutional guaranties." *Id.* at 454. In *Village Lutheran I*, 935 S.W.2d at 722-723, this court relied on *Temple Israel* for the proposition that City did not have regulatory power over the Church under its police powers, except for matters of safety, public health, and welfare of its residents.

We first address whether City's requirement that the Church apply for a special use permit for the planned expansion infringed on the Church's free exercise of religion. In *Village Lutheran I*, 935 S.W.2d at 722-723, this court found that because the City Council's decision was based on zoning ordinances and not on the enumerated safety regulations of section 89.020, it was unnecessary either for the Church to apply for a special use permit or for City to issue one.

*Village Lutheran I*, however, does not stand for the proposition that municipalities may never regulate the use of property by churches or that churches need never seek approval from municipalities to engage in certain conduct. Rather, *Village Lutheran I*, 935 S.W.2d at 722, recognizes that municipalities may use their regulatory powers over churches solely for the purposes of promoting health, safety, morals, or the general welfare of the community. See also section 89.020. Numerous decisions have acknowledged that municipalities, in the exercise of their police powers, may regulate churches. See, e.g., *Messiah Baptist Church v. County of Jefferson, State of Colo.*, 859 F.2d 820, 828 (10th Cir.1988) (zoning ordinance precluding the construction of church building in agricultural zone did not impinge on free exercise of religion where the reasons for denying building permit included access problems, erosion hazards, and inadequate fire protection); *First Assembly of God, Alexandria, Va. v. City of Alexandria, Va.*, 739 F.2d 942, 944 (4th Cir.1984) (special use permit conditions imposed on church to operate private school did not violate free exercise of religion where conditions related to the preservation of important municipal objectives, such as traffic and road safety, fire prevention, and noise); *Grosz v. City of Miami Beach, Fla.*, 721 F.2d 729, 738 (11TH Cir.1983) (application of zoning ordinance so as to prohibit using private residence for organized religious services not violative of free exercise of religion where aim was to preserve residential quality and protect



inhabitants from problems of traffic, noise, and litter); but see *Western Presbyterian Church v. Board of Zoning Adjustment of the District of Columbia*, 862 F.Supp. 538, 547 (D.C.Cir.1994) (enforcement of zoning regulations to prohibit church from feeding homeless persons on its premises substantially burdened free exercise of religion because ministering to the needy considered a religious activity). It is clear from these cases that the fact that a municipality exercises some control over the conduct of churches is not, per se, violative of a church's right to the free exercise of religion; but rather a determination of whether such regulation is tantamount to an infringement of the free exercise of religion depends on the facts and circumstances of each case. Thus, City's mere

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requirement that the Church apply for a special use permit did not infringe on the free exercise of religion.

Furthermore, under the facts of this case, the Church voluntarily applied for a special use permit, instead of pursuing an outright challenge to the constitutionality of the zoning ordinance either as written or as applied to it. Having chosen and initiated the permit procedure on its own, the Church cannot now claim a violation of its constitutional rights for pursuing that very procedure.

We next consider whether City's denial of a special use permit was an impingement of the Church's free exercise of religion. Here, although City denied the Church's application to build in the location the Church proposed, it indicated its willingness to grant the special use permit if the Church moved the expansion to a different location on the property. In *Village Lutheran I*, 935 S.W.2d at 722, this court held that it was not necessary either that the Church apply for or that City issue a special use permit before the Church could

proceed with the construction. Thus, City did not violate the Church's right to the free exercise of religion by refusing to issue a permit which the Church did not even need.

Because City did not violate the Church's right to the free exercise of religion, City was entitled to summary judgment on Church's claim for damages as a matter of law. The trial court did not err in granting summary judgment in favor of City.<sup>2</sup>

The judgment is affirmed.

JAMES A. PUDLOWSKI, P.J., and  
CLIFFORD H. AHRENS, J., concur.

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1 The trial court made no express determination regarding Count III in which the Church sought a declaration that City's zoning ordinance requiring the Church to obtain a special use permit was invalid and that the Church could proceed with the proposed expansion without the permit. Here, however, Count III was resolved in the Church's favor when this court affirmed as modified the judgment of the trial court in *Village Lutheran I*, 935 S.W.2d at 720, and determined that the Church need not obtain a special use permit before it could build. Given the facts of this case, by failing to address Count III and proceeding with Count IV, the trial court acknowledged the holding in *Village Lutheran I* and implicitly found in favor of the Church on that count. If a judgment, by implication, necessarily carries with it a finding upon other counts, the judgment will be sustained as final even though the count is not specifically mentioned. See *Martin v. Lorren*, 890 S.W.2d 352, 359 (Mo.App. S.D.1994) (although no mention of counterclaim made, judgment, by implication, sufficient to deny counterclaim). The judgment was sufficient to rule on Count III and Count IV is therefore appealable.

2 City also claims that the official immunity doctrine protected the "individual defendants" from liability. The individual defendants to which City referred were members of the City Council. The church's appeal, however, only related to City and members of the City Council were not parties to this appeal. We therefore decline to address City's claim regarding official immunity.